

Introduced by Senator Fuller

February 21, 2013

An act to amend Section 564 of the Code of Civil Procedure, and to amend Section 855 of the Public Utilities Code, relating to water and sewer system corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 489, as introduced, Fuller. Water corporations: sewer system corporations: appointment of receiver.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including water corporations and sewer system corporations. Whenever the commission determines that a water corporation or sewer system corporation is unable or unwilling to adequately serve its ratepayers or has actually or effectively been abandoned by its owners or is unresponsive to the rules or orders of the commission, existing law authorizes the commission to petition the superior court for the county within which the corporation has its principal office or place of business for the appointment of a receiver to assume possession of the corporation's property and to operate its system upon such terms and conditions as the court prescribes.

This bill would instead authorize the commission to appoint a receiver to assume possession of the corporation's property and to operate its system upon such terms and conditions as the commission prescribes. The bill would make other conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 564 of the Code of Civil Procedure is amended to read:

564. (a) A receiver may be appointed, in the manner provided in this chapter, by the court in which an action or proceeding is pending in any case in which the court is empowered by law to appoint a receiver.

(b) A receiver may be appointed by the court in which an action or proceeding is pending, or by a judge ~~thereof of that court~~, in the following cases:

(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the creditor's claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds ~~thereof of the property or fund~~, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

(2) In an action by a secured lender for the foreclosure of a deed of trust or mortgage and sale of property upon which there is a lien under a deed of trust or mortgage, where it appears that the property is in danger of being lost, removed, or materially injured, or that the condition of the deed of trust or mortgage has not been performed, and that the property is probably insufficient to discharge the deed of trust or mortgage debt.

(3) After judgment, to carry the judgment into effect.

(4) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or pursuant to the Enforcement of Judgments Law (Title 9 (commencing with Section 680.010)), or after sale of real property pursuant to a decree of foreclosure, during the redemption period, to collect, expend, and disburse rents as directed by the court or otherwise provided by law.

(5) Where a corporation has been dissolved, as provided in Section 565.

(6) Where a corporation is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

(7) In an action of unlawful detainer.

1 (8) At the request of the Public Utilities Commission pursuant
2 to Section ~~855~~ or 5259.5 of the Public Utilities Code.

3 (9) In all other cases where necessary to preserve the property
4 or rights of any party.

5 (10) At the request of the Office of Statewide Health Planning
6 and Development, or the Attorney General, pursuant to Section
7 129173 of the Health and Safety Code.

8 (11) In an action by a secured lender for specific performance
9 of an assignment of rents provision in a deed of trust, mortgage,
10 or separate assignment document. The appointment may be
11 continued after entry of a judgment for specific performance if
12 appropriate to protect, operate, or maintain real property
13 encumbered by a deed of trust or mortgage or to collect rents
14 therefrom while a pending nonjudicial foreclosure under power
15 of sale in a deed of trust or mortgage is being completed.

16 (12) In a case brought by an assignee under an assignment of
17 leases, rents, issues, or profits pursuant to subdivision (g) of Section
18 2938 of the Civil Code.

19 (c) A receiver may be appointed, in the manner provided in this
20 chapter, including, but not limited to, Section 566, by the superior
21 court in an action brought by a secured lender to enforce the rights
22 provided in Section 2929.5 of the Civil Code, to enable the secured
23 lender to enter and inspect the real property security for the purpose
24 of determining the existence, location, nature, and magnitude of
25 any past or present release or threatened release of any hazardous
26 substance into, onto, beneath, or from the real property security.
27 The secured lender shall not abuse the right of entry and inspection
28 or use it to harass the borrower or tenant of the property. Except
29 in case of an emergency, when the borrower or tenant of the
30 property has abandoned the premises, or if it is impracticable to
31 do so, the secured lender shall give the borrower or tenant of the
32 property reasonable notice of the secured lender's intent to enter
33 and shall enter only during the borrower's or tenant's normal
34 business hours. Twenty-four hours' notice shall be presumed to
35 be reasonable notice in the absence of evidence to the contrary.

36 (d) Any action by a secured lender to appoint a receiver pursuant
37 to this section shall not constitute an action within the meaning of
38 subdivision (a) of Section 726.

39 (e) For purposes of this section:

(1) “Borrower” means the trustor under a deed of trust, or a mortgagor under a mortgage, where the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation. The term includes any successor in interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(2) “Hazardous substance” means any of the following:

(A) Any “hazardous substance” as defined in subdivision (h) of Section 25281 of the Health and Safety Code.

(B) Any “waste” as defined in subdivision (d) of Section 13050 of the Water Code.

(C) Petroleum including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

(3) “Real property security” means any real property and improvements, other than a separate interest and any related interest in the common area of a residential common interest development, as the terms “separate interest,” “common area,” and “common interest development” are defined in Section 4095, 4100, and 4185 of the Civil Code, or real property consisting of one acre or less that contains 1 to 15 dwelling units.

(4) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of hazardous substances into, onto, or through soil, surface water, or groundwater.

(5) “Secured lender” means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor in interest of the beneficiary or mortgagee to the deed of trust or mortgage.

SEC. 2. Section 855 of the Public Utilities Code is amended to read:

855. Whenever the commission determines, after notice and hearing, that any water or sewer system corporation is unable or unwilling to adequately serve its ratepayers or has been actually or effectively abandoned by its owners, or is unresponsive to the rules or orders of the commission, the commission may petition

1 ~~the superior court for the county within which the corporation has~~
2 ~~its principal office or place of business for the appointment of~~
3 ~~appoint~~ a receiver to assume possession of its property and to
4 operate its system upon ~~such~~ *the* terms and conditions ~~as that~~ the
5 ~~court~~ *commission* shall prescribe. The ~~court~~ *commission* may
6 require, as a condition to the appointment of ~~such~~ *the* receiver, that
7 a sufficient bond be given by the receiver and conditioned upon
8 compliance with the orders of the ~~court~~ and the commission, and
9 the protection of all property rights involved. The ~~court~~ *commission*
10 shall provide for disposition of the facilities and system in like
11 manner as any other receivership proceeding in this state.

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